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The Honorable Marsha J. Pechman

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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JAMES R. CONROY,

Plaintiff,

No. C02-2380P

vs.

THE CITY OF SEATTLE, a  
municipal corporation and the  
members of its Police Force,  
OFFICERS SCOTT MOSS, JOHN  
HAYES, MARK GRINSTEAD,  
MARGARET SMITH, JOE  
MACCARRONE, BRADLEY JOHNSON,  
SUZANNE PARTON, CLAY  
STOCKWELL, MARK WORSTMAN, GLEN  
MULKEY, JAMES BRAKEBILL, ROLF  
TOWNE, DWAYNE PIRAK, JOE  
PIOLI, GREG RICE, MATT NESS,  
LIEUTENANT MARK MOUNT, and  
CAPTAIN MICHAEL SANFORD,

Defendants.

AMENDED COMPLAINT FOR PERSONAL  
INJURIES AND DAMAGES FOR  
DEPRIVATION OF RIGHTS,  
PRIVILEGES AND IMMUNITIES AND  
PENDENT CLAIMS (SUPPLEMENTAL  
JURISDICTION)

JURY DEMAND

I. JURISDICTION

1.1 Jurisdiction of this claim lies in this court based upon  
42 USC §1983 reading as follows:

Civil Action for Deprivation of Rights. Every person  
who, under color of any statute, ordinance, regulation,  
custom, or usage, of any State or Territory or the

AMENDED COMPLAINT PERSONAL INJURIES &  
DAMAGES FOR DEPRIVATION OF RIGHTS,  
PRIVILEGES AND IMMUNITIES &  
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ORIGINAL

District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

1.2 This court has original jurisdiction of this action pursuant to 28 USC §1343(a)(3) reading as follows:

**Civil Rights and elective franchise.** (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: ... (3) to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;...

1.3 This court also has supplemental jurisdiction of the plaintiff's claims (other than the constitutional claims) pursuant to 28 USC §1337 reading as follows:

(a) Except as provided in subsection (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

AMENDED COMPLAINT PERSONAL INJURIES &  
DAMAGES FOR DEPRIVATION OF RIGHTS,  
PRIVILEGES AND IMMUNITIES &  
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1                           II. VENUE  
2

3     Venue is proper in this judicial district pursuant to 28 USC  
4     §1331(b)(1) because the defendant city of Seattle, a municipal  
5     corporation, is located in this judicial district and the  
6     individual defendants all reside in this District. Venue is also  
7     appropriate in this District under 28 USC §1331 (b)(2) because a  
8     substantial part of the events giving rise to this claim occurred  
9     within this District.

10                          III. PARTIES  
11

12     3.1 James R. Conroy, plaintiff is a single person, age 42 and  
13     is a citizen of the United States. He is now and always has been  
14     a resident of Seattle, King County, Washington.

15     3.2 City of Seattle is a municipal corporation.

16     3.3 The individual defendants named in this complaint are  
17     officers of the Police Department of the City of Seattle and all  
18     are residents in this district.

19     3.4 Claimant has a mental and emotional handicap and has been  
20     treated intermittently by psychiatrists and clinical psychologists.  
21     These health care practitioners have prescribed various medications  
22     to assist and, when taking his medications on a regular basis,  
23     claimant lives and behaves normally as a citizen. When not taking  
24     his medication, he will at times behave inappropriately, but at no  
25     time during his adult life has he ever behaved violently nor  
26     inflicted any physical abuse upon any person. From time to time  
27

28     AMENDED COMPLAINT PERSONAL INJURIES &  
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30     PRIVILEGES AND IMMUNITIES &  
31     PENDENT CLAIMS - 3

1 his actions may be described as inappropriate, but he is, and has  
2 always been, a gentle and a careful person.

3                   IV. FACTS

4         4.1 On August 9, 2001 claimant was at his home which he owns  
5 at his residence address, 2114 - 34th Avenue West, Seattle,  
6 Washington 98199. He was alone in the home and had locked himself  
7 in. He had written on the front window of the home, "Help me." A  
8 report was made by persons unknown to the Seattle Police Department  
9 who responded by sending approximately 12 police vehicles and two  
10 armored vehicles to the scene. A crowd gathered. Two of claimants  
11 siblings were there who knew personally from claimant's history  
12 that he was merely behaving inappropriately and that apparently had  
13 not regularly taken his medication. A number of the neighbors of  
14 claimant, who knew him to be a gentle and kind person, and who also  
15 knew of his mental difficulties, were also on the scene. One of  
16 claimant's mental health professionals came to the scene and the  
17 following occurred:

18                 (a) Claimant's brothers both spoke to the police officer  
19 in charge telling him that claimant was not violent and that it  
20 would merely be necessary that one or both of them talked to him  
21 and whatever difficulty the police perceived would be peacefully  
22 resolved. The officer responded, "get out of here--this is a  
23 police matter," and told both brothers to leave the area.

24                 (b) The mental health professional who had previously  
25 worked with claimant, made the same request to the police, knowing

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27 DAMAGES FOR DEPRIVATION OF RIGHTS,  
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1 that claimant was not a violent person and asking merely to speak  
2 with the claimant to resolve any problems. The police told the  
3 mental professional "get out of here," again asserting that it was  
4 a "police matter."

5 (c) After several hours the police requested help from  
6 King County Mental Health Crisis and Commitment Services. Mental  
7 Health Professionals from that agency arrived at the scene. By  
8 that time police patrol officers, hostage negotiators and the  
9 Seattle Police Special Weapons and Tactics Team (SWAT) had  
10 assembled. Negotiators were attempting to communicate with  
11 claimant by means of a bullhorn or amplified speakers. Claimant  
12 was not responsive. The mental health professionals advised police  
13 officers that there did not exist sufficient evidence for  
14 involuntary commitment of claimant pursuant to State law. Police  
15 personnel advised the mental health professionals that upon contact  
16 with claimant that they would transport him to Harborview Hospital  
17 for mental health evaluation regardless of whether or not there  
18 existed probable cause.

19 (d) For several hours thereafter police officers  
20 attempted to coax claimant from his home. A police armored vehicle  
21 was positioned on plaintiff's property immediately outside this  
22 front door of his house. SWAT officers and other officers  
23 surrounded the premises and pointed weapons in the direction of  
24 claimant's residence. A SWAT crisis team consisting of defendants  
25 Mulkey, Pirak, Pioli, Rice and Ness positioned themselves

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1 approximately 20 feet from plaintiff's front door behind a storage  
2 shed. All SWAT officers were equipped with munitions including  
3 less lethal munitions. A SWAT tactical plan was developed whereby  
4 less lethal munitions would be utilized to prevent claimant from  
5 re-entering his residence in the event claimant left his residence  
6 and stood on his front porch. As no time was claimant provided  
7 warning that weapons would be used against him if he failed to  
8 surrender to police.

9 (e) When claimant opened the door and stepped out onto  
10 the porch, defendant Dwayne Pirak, one of the SWAT police officers,  
11 fired an impact weapon at point blank range, directly into  
12 claimant's face, destroying one of his eyes. Defendant Greg Rice  
13 fired an electrically charged Taser gun into claimant to render him  
14 immobile. Claimant has permanently lost all vision in his eye and  
15 for his lifetime will have a prosthetic eye.

16 4.2 Claimant was not violent and at no time in his life had  
17 ever been violent. Whatever crime the police suspected the  
18 claimant to have committed was not of the severity that justified  
19 the unlawful and unconstitutional force used. Claimant did not  
20 pose any immediate threat to the police nor to any citizen and was  
21 neither resisting or fleeing; the amount of force used by the  
22 police in shooting claimant directly in the face at point blank  
23 range was not a good faith effort to maintain discipline, but was  
24 rather a malicious and sadistic act on the part of the police to  
25 harm the plaintiff and was done recklessly and with callous

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28 PENDENT CLAIMS - 6

1 indifference, all in violation of claimant's constitutional rights  
2 under the Fourth and Fourteenth Amendments of the Constitution of  
3 the United States and in violation of 42 USC §1983, and the arrest  
4 of claimant in this manner constituted an assault and battery and  
5 a false arrest.

6       4.3 The Fourth Amendment to the United States Constitution  
7 reads as follows:

8           The right of the people to be secure in their persons,  
9 houses, papers, and effects, against unreasonable  
10 searches and seizures, shall not be violated, and no  
11 Warrants shall issue, but upon probable cause, supported  
12 by oath or affirmation, and particularly describing the  
place to be searched, and the persons or things to be  
seized.

12       4.4 The Fourteenth Amendment to the United States  
13 Constitution reads as follows:

14           ...no state shall make or enforce any law which shall  
15 abridge the privileges or immunities of citizens of the  
16 United States, nor shall any state deprive any person of  
17 life, liberty or property, without due process of law; or  
deny to any person within its jurisdiction the equal  
protection of the law.

18       4.5 The Fourth Amendment guarantees to every person the right  
19 to be free from the use of excessive force by the police and the  
20 forces of government. The force used upon plaintiff was  
21 intentional or at least with reckless and callous disregard for  
22 claimant's constitutional rights, was brutal, unjustified, abusive  
23 and offensive to human dignity and out of all proportion to any  
24 conceived threat that the officers violating his rights may have  
25 perceived. The injury to plaintiff James R. Conroy was an

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1 objectively severe physical injury, satisfying the injury element  
2 of the civil rights claim under 42 USC §1983.  
3

4 4.6 The Fourteenth Amendment requires probable cause that a  
5 criminal offense has been committed prior to an arrest and  
6 deprivation of the liberty of the arrested person. There was no  
7 probable cause for the arrest and physical abuse committed upon  
8 claimant and he was falsely arrested, and intentionally and  
9 unjustifiably confined, and his liberty taken from him without due  
10 process of law and it constituted a denial of equal protection of  
11 the law. The actions of the police constituted an intentional  
12 infliction of bodily harm to which plaintiff did not consent.

13 4.7 The conduct of the police officers above described was in  
14 violation of the Fourth and Fourteenth Amendments of the United  
15 States Constitution and in violation of 42 USC §1983.

16 4.8 The City of Seattle is a municipal corporation within the  
17 State of Washington which maintains as its agents and servants of  
18 the City of Seattle, the members of the Seattle Police Department.  
19 The City of Seattle acted with reckless and callous disregard for  
20 the constitutional rights of citizens including the claimant,  
21 neither properly supervising nor instructing the police personnel  
22 to exercise appropriate restraint and to prohibit absolutely the  
23 use of excessive and unreasonable force in effecting an arrest.  
24 Further, the policy followed by the Seattle Police Department in  
25 reckless disregard of the constitutional rights of the citizens and  
26 the claimant followed a policy of permitting and not restraining

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the police officers from firing guns directly into the face of a citizen who is not posing any threat to the police officers nor to any citizen.

4.9 Claimant was hospitalized and, during the period from the date of the incident through September 7, 2001, incurred hospital expense of \$34,517.41 and medical and surgical expenses of \$8,613.41. In addition, the expenses for the prosthetic eye and medical treatment associated therewith exceed \$3,500.

**COUNT ONE**

## **DEPRIVATION OF RIGHTS/COMPENSATORY DAMAGES**

Plaintiff has permanently lost the sight in his eye and for the rest of his life will be required to wear a prosthetic eye. He has suffered personal indignity, embarrassment, humiliation, emotional and mental distress, mental anguish, pain and suffering, medical expense for loss of and treatment for his eye injury and replacement with a prosthetic eye and anticipates expense over his lifetime for counseling, psychiatric and psychological assistance superimposed upon a difficult mental health situation which plaintiff was burdened with prior to the incident. Plaintiff has sustained loss of income and loss of earning capacity, all to plaintiff's compensatory damage in the sum of \$1 million for violation of 42 USC §1983 and deprivation of his constitutional rights.

AMENDED COMPLAINT PERSONAL INJURIES &  
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1  
2                   **COUNT TWO**  
3                   **PUNITIVE DAMAGES**

4                 The conduct of the defendants described in Paragraph IV above  
5                 was malicious and constituted an intentional and/or reckless  
6                 disregard of plaintiff's civil and constitutional rights. The  
7                 police operated in a manner that evidenced callous indifference to  
8                 the rights of plaintiff and the officers acted in bad faith and  
9                 defendants should be punished and deterred from the type of conduct  
10                visited upon the plaintiff and an additional award of punitive  
11                damages in the sum of \$1 million is appropriate and demanded by  
12                plaintiff.

13  
14                   **COUNT THREE**  
15                   **ATTORNEY'S FEES**

16                 42 USC §1988 provides that in any action or proceeding to  
17                 enforce a violation of 42 USC §1983 the court, in its discretion,  
18                 may allow the prevailing party a reasonable attorney's fee and  
19                 plaintiff requests that at the conclusion of trial, the court, in  
20                 addition to compensatory and punitive damages award plaintiff a  
21                 reasonable attorney's fee for the prosecution of this action.

22  
23                   **COUNT FOUR**  
24                   **ASSAULT AND BATTERY**

25                 The conduct of the defendants described in Paragraph IV above  
26                 constituted an intentional infliction of harmful body contact to  
27                 which the plaintiff did not consent, causing damage to the  
28                 plaintiff in the sum of \$1 million as described in Count One for  
compensatory damage.

26  
27                 AMENDED COMPLAINT PERSONAL INJURIES &  
28                 DAMAGES FOR DEPRIVATION OF RIGHTS,  
                       PRIVILEGES AND IMMUNITIES &  
                       PENDENT CLAIMS - 10

1  
2                   **COUNT FIVE**  
3                   **FALSE ARREST, FALSE IMPRISONMENT**  
4

5                  The conduct of the defendants described in Paragraph IV above  
6 amounted to an intentional confinement of the plaintiff which was  
7 unjustified, amounting to false arrest/false imprisonment to the  
8 damage of the plaintiff in the sum of \$1 million as described in  
9 Count One for compensatory damages.

10                 **COUNT SIX**  
11                 **TORT OF OUTRAGE**  
12

13                  The conduct of the defendants described in Paragraph IV above  
14 was outrageous in character, extreme in degree and beyond all  
15 possible bounds of decency. The conduct of the defendants was  
16 atrocious and utterly intolerable in a civilized community to the  
17 damage of the plaintiff in the sum of \$1 million as alleged in  
18 Count One for compensatory damages.

19                 **COUNT SEVEN**  
20                 **NEGLIGENCE**  
21

22                  The conduct of the defendants described herein was negligent  
23 in that defendants Pirak, Pioli, Rice, Ness and Mulkey failed to  
24 exercise reasonable care under the circumstances resulting in  
25 substantial and permanent injury to plaintiff.

26                  Plaintiff demands trial by jury.

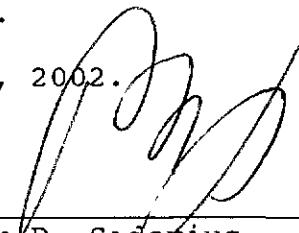
27                  WHEREFORE, plaintiff prays for judgment against the defendants  
28 and each of them as follows:

29                  1. For \$1 million compensatory damages on Counts One, Four,  
30 Five and Six;

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32                  AMENDED COMPLAINT PERSONAL INJURIES &  
33 DAMAGES FOR DEPRIVATION OF RIGHTS,  
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1       2. For \$1 million punitive damages on Count Two;  
2       3. That the court award a reasonable attorney's fee as  
3 requested in Count Three;  
4       4. For plaintiff's costs and disbursements herein to be  
5 taxed and such other and further relief as to the court may seem  
6 just and equitable in the premises.

7       Dated this 28 day of March, 2002.

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10        
11      Frank R. Siderius WSBA 7759  
12      SIDERIUS LONERGAN & MARTIN LLP  
13      Attorneys for Plaintiff

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27      AMENDED COMPLAINT PERSONAL INJURIES &  
28      DAMAGES FOR DEPRIVATION OF RIGHTS,  
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